

Remarks

Claims 17-20 have been rejected under 35 USC 101 because paragraph 0026 of the specification includes propagated signals as computer readable medium, and for reciting “provides instructions” rather than “storing instructions”. Claim 17 has been amended to specify a tangible computer readable medium, to eliminate the inclusion of propagated signals as a computer readable medium. Further the claim has been amended to recite “storing” instructions, as suggested by the Examiner. Claims 18-20 now contain this limitation through their dependency on claim 17. Withdrawal of the rejection under 35 USC 101 is respectfully requested.

Claims 1-13 have been rejected under 35 USC 112(2) for not claiming sufficient structure of the apparatus. Independent claims 1 and 8 have been amended to include a computing platform, a limitation that is supported in Applicants’ Fig. 4. and paragraph 0027. Claims 2-7 and 9-13 include these limitations through their dependency on claims 1 and 8, respectively.

Claims 17-20 have been rejected under 35 USC 112(2) for insufficient antecedent basis. Although Applicants disagree that there is no antecedent basis for “said performing” (it refers back to “perform a data transmission”), claim 17 has been amended to more clearly state the intended limitation on temporal ordering. Claims 18-20 include this limitation through their dependency on claim 17.

Withdrawal of the rejection under 35 USC 112(2) is respectfully requested.

Claims 17-20 have been rejected under 35 USC 102(e) as being anticipated by U.S. patent 6,459,704 (“Jandrell”).

Claims 1-16 have been rejected under 35 USC 103(a) as being unpatentable over Jandrell.

Applicants respectfully traverse these rejections because the cited references do not disclose or suggest every element of any pending claim, as the following analysis shows.

Independent claims 1, 8, and 14 each recites, in various language, performing these operations in this order:

- 1) perform a data transmission,
- 2) monitor for a clear channel (i.e., no other devices are transmitting on the channel) after the transmission is complete,
- 3) start a time-out period, after a clear channel is detected, to wait for an acknowledgement.

The rejection states that Jandrell teaches, in Fig. 7, 1) performing the transmission at step 608, and 3) beginning the timeout period at step 610. However, the rejection also states that Jandrell does not teach 2) monitoring for a clear channel after transmitting and before starting the time-out period. The rejection then states that Jandrell teaches such monitoring at step 602, and that it would be obvious to move this monitoring operation to another place in Jandrell’s sequence, because such a

rearrangement of operations would have a beneficial effect. The stated beneficial effect is a simple re-statement of the problem that Applicants' invention is trying to solve! THIS IS IMPERMISSIBLE HINDSIGHT!

In fact, Jandrell monitors for a clear channel at 602 to determine when to start the transmission, not to determine when to start any timeout period related to an acknowledgement. Although Jandrell has several figures that show a sequence of operations, none of them monitor for a clear channel after the transmission is complete. They all monitor for a clear channel before the transmission, to determine when to begin the transmission.

Applicants' invention is useful in networks in which other network devices are allowed to transmit over the channel between the claimed device making a transmission and the claimed device receiving an acknowledgement to that transmission, since those other devices could control the channel until the acknowledgement timeout expired. There is no indication that the networks described by Jandrell even permit such operations. At the time of the filing of the Jandrell reference (1997), it was common for two devices to have exclusive use of a channel until the transmission/acknowledgement sequence between them was either complete, or timed out, so it was not necessary to worry about other devices controlling the network during that sequence and thus preventing the acknowledgement from being returned in the allowed time. Thus, there was no motivation at the time of the Jandrell reference to seek a way to prevent such a problem.

Reconsideration and withdrawal of the rejection of claims 1, 8, and 14 is respectfully requested.

Similarly, claim 17 recites performing these operations in this order:

- 1) placing data into a queue for transmission,
- 2) monitor for a clear channel after the transmission is complete,
- 3) start a time-out period, after a clear channel is detected, to wait for an acknowledgement.

The only difference between this sequence and that of claims 1, 8, and 14, is that the first operation is to place the data into a queue for transmission, rather than actually making the transmission. However, the second and third operations are the same as before, and still require that monitoring for a clear channel takes place after transmission, and that the timeout period starts after a clear channel is detected. For this claim, the rejection cites Jandrell's step 600 for placing the data into a transmission queue, step 602 for monitoring for a clear channel, and step 610 for beginning a timeout period. However, claim 17 requires that the operation of monitoring takes place after the transmission, while Jandrell's step 602 takes place before the transmission at 608. Again, Jandrell's sequence is different, and there is no motivation to rearrange Jandrell's sequence to match that of Applicants.

The remaining pending claims each depend from one of claims 1, 8, 14, or 17, respectively, and therefore contain the same limitations not disclosed or suggested by the cited reference.

Conclusion

For the foregoing reasons, it is submitted that the application is in condition for allowance, and indication of allowance by the Examiner is respectfully requested. If the Examiner has any questions concerning this application, he or she is requested to telephone the undersigned at the telephone number shown below as soon as possible. If any fee insufficiency or overpayment is found, please charge any insufficiency or credit any overpayment to Deposit Account No. 50-0221.

Respectfully submitted,

Intel Corporation

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/John F. Travis/

John F. Travis
Reg. No. 43,203

Attorney Telephone:

(512) 732-3918

Correspondence Address:

Intel Corporation
c/o Intellevate, LLC
P.O. Box 52050
Minneapolis, MN 55402